

## HUMAN SERVICES BOARD

## INTRODUCTION

The parties stipulated to the entry of petitioner's medical records, petitioner's verification of her immigration status, and Department records. The following decision is

based upon petitioner's oral testimony, the stipulated exhibits, and the parties' legal arguments. The decision addresses two issues; namely, whether petitioner meets the VHAP eligibility criteria as a qualified alien and, if not, whether the issue of emergency medical care is properly before the Board.

FINDINGS OF FACT

1. The petitioner is a fifty-two-year-old woman originally from Panama. Petitioner's daughter and family reside in Vermont. Petitioner's daughter is an American Citizen.

2. The petitioner first entered the United States on or about May 18, 2001 on a tourist visa. On or about August 20, 2001, petitioner filed an Application to Extend/Change Nonimmigrant Status with the Immigration and Naturalization Service (INS). Petitioner filed for permanent residency on or about August 20, 2003. Petitioner received her permanent resident card on or about February 18, 2004.

Petitioner received her work permit late 2003. After receiving her work permit, petitioner became employed and worked until she was no longer able to do so due to health problems.

3. Petitioner filed a reapplication for VHAP on or about June 18, 2007 stating that she is a legal alien and is unable to work due to chronic pain.

4. The Department issued a Notice of Decision on or about July 10, 2007 informing petitioner that her VHAP eligibility would end on July 31, 2008 because she did not meet the qualified alien rule. Petitioner requested a fair hearing. Petitioner is receiving continuing benefits.

5. Petitioner testified that she is unable to work due to chronic pain and that she needs ongoing pain management treatments. Petitioner had a hysterectomy on or about February 28, 2005 that resulted in damage to her urethra. She had subsequent surgery on or about February 21, 2006 to repair her right urethra. Petitioner was diagnosed with degenerative disc disease during 2006. Petitioner continues to have debilitating pain.

6. Petitioner submitted medical records detailing ongoing efforts to control her pain through use of oral pain medications and the administration of injections every few weeks. Petitioner's treating physician, Dr. R.Z., stated that petitioner has chronic and disabling pain despite multiple interventions and procedures. Her records are

notable for nerve blocks administered periodically by Dr. J.G. starting in early 2006.

ORDER

The Department's decision to deny VHAP benefits is affirmed.

REASONS

The VHAP program was created by the Legislature as a Medicaid waiver program to provide health insurance coverage to low income Vermonters who were uninsured or underinsured. As of January 1, 2007, the VHAP regulations incorporated the citizenship requirements used in M170 of the Medicaid program. Welfare Assistance Manual (W.A.M.) § 4001.3. The Department applied the citizenship provisions of M170 to petitioner when she submitted her redetermination application.

M170.1 states, in part:

(a) As a condition of eligibility for Medicaid an individual must be:

- (1) A citizen or national of the United States (M170.2), or
- (2) A qualified alien (M170.3).

(b) Exceptions: Certain qualified aliens are barred from Medicaid for five years (M170.4).

(c) Qualified aliens affected by the five year bar and non-qualified aliens may be eligible for emergency

services and/or emergency labor and delivery services (M170.8).

Petitioner is considered a "qualified alien" because she is a permanent resident. M170.3(a)(1). However, there is a five year bar on medical coverage for qualified aliens. In particular, M170.4 states, in part:

(a) Immigrants who enter the United States on or after August 22, 1996 as qualified aliens are not eligible to receive Medicaid for five years from the date they enter the country. If they are not qualified aliens when they enter, the five year bar begins the date they became a qualified alien. The following qualified aliens are subject to the five year bar:

(1) Lawful permanent residents (LPRs); . . .

There are certain exemptions to the five year bar including qualified aliens who are honorably discharged veterans, currently on active duty, or the spouse or dependent child of a veteran or current service member. M170.4(b). Petitioner does not fit the exemptions in M170.4(b). In addition, there is an exemption for emergency medical treatment. M170.4(c). The Vermont provisions mirror the eligibility requirements for federally financed programs established by Congress. 8 U.S.C. § 1613.

Petitioner became a qualified alien when she was granted permanent residency status on February 18, 2004. Based on the regulations, petitioner is subject to the five year bar

until February 19, 2009. As a result, the Department's decision to deny petitioner VHAP because she does not meet the citizenship requirements should be affirmed.<sup>1</sup>

The Department argues that the Board should not consider petitioner's argument that her pain treatments should be covered as an exception under the emergency medical care provisions. The Department believes that petitioner's claims are not ripe since no formal application for emergency medical coverage has been made pending this case and because petitioner's treatment has continued to be covered through continuing benefits. Although the petitioner is concerned about future medical treatment, petitioner can apply for the emergency medical exception if the need arises.

In light of the above, the Board will not render an advisory decision. If petitioner finds she needs emergency treatment before the five year bar ends, petitioner can follow the procedures the Department has set out which

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<sup>1</sup> Petitioner has made an equitable argument that the five year bar should run from the date she applied for permanent residency or August 20, 2003 rather than the date INS granted permanent residency or February 13, 2004. Petitioner's argument would not change the underlying decision made in July 2007, only the date when the five year bar would end. But, the language of the regulations is clear that the operative date is the date the person becomes a qualified alien.

include obtaining treatment and having the provider seek coverage from the State.<sup>2</sup>

Based on the foregoing, the Department's decision is affirmed. 3 V.S.A. § 3091(d).

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<sup>2</sup> In terms of future applications for emergency medical coverage, the parties should consider the discussion of what constitutes emergency coverage found in Greenery Rehabilitation Group Inc. v. Hammon, 150 F.3d 226 (2<sup>nd</sup> Cir. 1998); Luna v. Division of Social Serv's., 162 N.C.App. 1 (2004); Diaz v. Division of Social Serv's., 360 N.C. 384, 628 S.E.2d 1 (2006); Scottsdale Healthcare Inc. v. Arizona Health Care Cost Containment System Admin., 75 P.3d. 91 (2003); and Szewczyk v. Department of Social Services, 275 Conn. 464 (2005).